

Senate Amendment 3221

PAG LIN

1 1 Amend the amendment, S=3219, to House File 619, as
1 2 amended, passed, and reprinted by the House, as
1 3 follows:
1 4 #1. By striking page 1, line 1, through page 37,
1 5 line 37, and inserting the following:
1 6 <Amend House File 619, as amended, passed, and
1 7 reprinted by the House, as follows:
1 8 #1. By striking everything after the enacting
1 9 clause and inserting the following:
1 10 <DIVISION I
1 11 DNA PROFILING
1 12 Section 1. NEW SECTION. 81.1 DEFINITIONS.
1 13 As used in this chapter, unless the context
1 14 otherwise requires:
1 15 1. "DNA" means deoxyribonucleic acid.
1 16 2. "DNA databank" means the repository for DNA
1 17 samples obtained pursuant to section 81.4.
1 18 3. "DNA database" means the collection of DNA
1 19 profiles and DNA records.
1 20 4. "DNA profile" means the objective form of the
1 21 results of DNA analysis performed on a DNA sample.
1 22 The results of all DNA identification analysis on an
1 23 individual's DNA sample are also collectively referred
1 24 to as the DNA profile of an individual.
1 25 5. "DNA profiling" means the procedure established
1 26 by the division of criminal investigation, department
1 27 of public safety, for determining a person's genetic
1 28 identity.
1 29 6. "DNA record" means the DNA sample and DNA
1 30 profile, and other records in the DNA database and DNA
1 31 data bank used to identify a person.
1 32 7. "DNA sample" means a biological sample provided
1 33 by any person required to submit a DNA sample or a DNA
1 34 sample submitted for any other purpose under section
1 35 81.4.
1 36 8. "Person required to submit a DNA sample" means
1 37 a person convicted, adjudicated delinquent, receiving
1 38 a deferred judgment, or found not guilty by reason of
1 39 insanity of an offense requiring DNA profiling
1 40 pursuant to section 81.2. "Person required to submit
1 41 a DNA sample" also means a person determined to be a
1 42 sexually violent predator pursuant to section 229A.7.
1 43 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO
1 44 SUBMIT A DNA SAMPLE.
1 45 1. A person who receives a deferred judgment for a
1 46 felony or against whom a judgment or conviction for a
1 47 felony has been entered shall be required to submit a
1 48 DNA sample for DNA profiling pursuant to section 81.4.
1 49 2. A person determined to be a sexually violent
1 50 predator pursuant to chapter 229A shall be required to
2 1 submit a DNA sample for DNA profiling pursuant to
2 2 section 81.4 prior to discharge or placement in a
2 3 transitional release program.
2 4 3. A person found not guilty by reason of insanity
2 5 of an offense that requires DNA profiling shall be
2 6 required to submit a DNA sample for DNA profiling
2 7 pursuant to section 81.4 as part of the person's
2 8 treatment management program.
2 9 4. A juvenile adjudicated delinquent of an offense
2 10 that requires DNA profiling of an adult offender shall
2 11 be required to submit a DNA sample for DNA profiling
2 12 pursuant to section 81.4 as part of the disposition of
2 13 the juvenile's case.
2 14 5. An offender placed on probation shall
2 15 immediately report to the judicial district department
2 16 of correctional services after sentencing so it can be
2 17 determined if the offender has been convicted of an
2 18 offense requiring DNA profiling. If it is determined
2 19 by the judicial district that DNA profiling is
2 20 required, the offender shall immediately submit a DNA
2 21 sample.
2 22 6. A person required to register as a sex
2 23 offender.
2 24 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA

2 25 DATABASE AND DNA DATABANK.
2 26 1. A state DNA database and a state DNA databank
2 27 are established under the control of the division of
2 28 criminal investigation, department of public safety.
2 29 The division of criminal investigation shall conduct
2 30 DNA profiling of a DNA sample submitted in accordance
2 31 with this section.
2 32 2. A DNA sample shall be submitted, and the
2 33 division of criminal investigation shall store and
2 34 maintain DNA records in the DNA database and DNA
2 35 databank for persons required to submit a DNA sample.
2 36 3. A DNA sample may be submitted, and the division
2 37 of criminal investigation shall store and maintain DNA
2 38 records in the DNA database and DNA databank for any
2 39 of the following:
2 40 a. Crime scene evidence and forensic casework.
2 41 b. A relative of a missing person.
2 42 c. An anonymous DNA profile used for forensic
2 43 validation, forensic protocol development, or quality
2 44 control purposes, or for the establishment of a
2 45 population statistics database.
2 46 4. A fingerprint record of a person required to
2 47 submit a DNA sample shall also be submitted to the
2 48 division of criminal investigation with the DNA sample
2 49 to verify the identity of the person required to
2 50 submit a DNA sample.
3 1 Sec. 4. NEW SECTION. 81.4 COLLECTING,
3 2 SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA
3 3 SAMPLES AND DNA RECORDS.
3 4 1. The division of criminal investigation shall
3 5 adopt rules for the collection, submission, analysis,
3 6 identification, storage, and disposition of DNA
3 7 records.
3 8 2. A supervising agency having control, custody,
3 9 or jurisdiction over a person shall collect a DNA
3 10 sample from a person required to submit a DNA sample.
3 11 The supervising agency shall collect a DNA sample,
3 12 upon admittance to the pertinent institution or
3 13 facility, of the person required to submit a DNA
3 14 sample or at a determined date and time set by the
3 15 supervising agency. If a person required to submit a
3 16 DNA sample is confined at the time a DNA sample is
3 17 required, the person shall submit a DNA sample as soon
3 18 as practicable. If a person required to submit a DNA
3 19 sample is not confined after the person is required to
3 20 submit a DNA sample, the supervising agency shall
3 21 determine the date and time to collect the DNA sample.
3 22 3. A person required to submit a DNA sample who
3 23 refuses to submit a DNA sample may be subject to
3 24 contempt proceedings pursuant to chapter 665 until the
3 25 DNA sample is submitted.
3 26 4. The division of criminal investigation shall
3 27 conduct DNA profiling on a DNA sample or may contract
3 28 with a private entity to conduct the DNA profiling.
3 29 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL
3 30 LIABILITY == LIMITATION.
3 31 A person who collects a DNA sample shall not be
3 32 civilly or criminally liable for the collection of the
3 33 DNA sample if the person performs the person's duties
3 34 in good faith and in a reasonable manner according to
3 35 generally accepted medical practices or in accordance
3 36 with the procedures set out in the administrative
3 37 rules of the department of public safety adopted
3 38 pursuant to section 81.4.
3 39 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.
3 40 1. A person who knowingly or intentionally does
3 41 any of the following commits an aggravated
3 42 misdemeanor:
3 43 a. Discloses any part of a DNA record to a person
3 44 or agency that is not authorized by the division of
3 45 criminal investigation to have access to the DNA
3 46 record.
3 47 b. Uses or obtains a DNA record for a purpose
3 48 other than what is authorized under this chapter.
3 49 2. A person who knowingly or intentionally alters
3 50 or attempts to alter a DNA sample, falsifies the
4 1 source of a DNA sample, or materially alters a
4 2 collection container used to collect the DNA sample,
4 3 commits a class "D" felony.
4 4 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST
4 5 NOT INVALIDATED.

4 6 The detention, arrest, or conviction of a person
4 7 based upon a DNA database match is not invalidated if
4 8 it is determined that the DNA sample or DNA profile
4 9 was obtained or placed into the DNA database by
4 10 mistake or error.

4 11 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

4 12 1. A DNA record shall be considered a confidential
4 13 record and disclosure of a DNA record is only
4 14 authorized pursuant to this section.

4 15 2. Confidential DNA records under this section may
4 16 be released to the following agencies for law
4 17 enforcement identification purposes:

4 18 a. Any criminal or juvenile justice agency as
4 19 defined in section 692.1.

4 20 b. Any criminal or juvenile justice agency in
4 21 another jurisdiction that meets the definition of a
4 22 criminal or juvenile justice agency as defined in
4 23 section 692.1.

4 24 3. The division of criminal investigation shall
4 25 share the DNA record information with the appropriate
4 26 federal agencies for use in a national DNA database.

4 27 4. A DNA record or other forensic information
4 28 developed pursuant to this chapter may be released for
4 29 use in a criminal or juvenile delinquency proceeding
4 30 in which the state is a party and where the DNA record
4 31 or forensic information is relevant and material to
4 32 the subject of the proceeding. Such a record or
4 33 information may become part of a public transcript or
4 34 other public recording of such a proceeding.

4 35 5. A DNA record or other forensic information may
4 36 be released pursuant to a court order for criminal
4 37 defense purposes to a defendant, who shall have access
4 38 to DNA samples and DNA profiles related to the case in
4 39 which the defendant is charged.

4 40 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA
4 41 RECORDS.

4 42 1. A person whose DNA record has been included in
4 43 the DNA database or DNA databank established pursuant
4 44 to section 81.3 may request, in writing to the
4 45 division of criminal investigation, expungement of the
4 46 DNA record from the DNA database and DNA databank
4 47 based upon the person's conviction, adjudication, or
4 48 civil commitment which caused the submission of the
4 49 DNA sample being reversed on appeal and the case
4 50 dismissed. The written request shall contain a
5 1 certified copy of the final court order reversing the
5 2 conviction, adjudication, or civil commitment, and a
5 3 certified copy of the dismissal, and any other
5 4 information necessary to ascertain the validity of the
5 5 request.

5 6 2. The division of criminal investigation, upon
5 7 receipt of a written request that validates reversal
5 8 on appeal of a person's conviction, adjudication, or
5 9 commitment, and subsequent dismissal of the case, or
5 10 upon receipt of a written request by a person who
5 11 voluntarily submitted a DNA sample under section 81.3,
5 12 subsection 3, paragraph "b", or upon receipt of a
5 13 written request by a person who voluntarily submitted
5 14 a DNA sample pursuant to section 81.3, subsection 3,
5 15 paragraph "b", shall expunge all of the DNA records
5 16 and identifiable information of the person in the DNA
5 17 database and DNA databank. However, if the division
5 18 of criminal investigation determines that the person
5 19 is otherwise obligated to submit a DNA sample, the DNA
5 20 records shall not be expunged. If the division of
5 21 criminal investigation denies an expungement request,
5 22 the division shall notify the person requesting the
5 23 expungement of the decision not to expunge the DNA
5 24 record and the reason supporting its decision. The
5 25 division of criminal investigation decision is subject
5 26 to judicial review pursuant to chapter 17A. The
5 27 department of public safety shall adopt rules
5 28 governing the expungement procedure and a review
5 29 process.

5 30 3. The division of criminal investigation is not
5 31 required to expunge or destroy a DNA record pursuant
5 32 to this section, if expungement or destruction of the
5 33 DNA record would destroy evidence related to another
5 34 person.

5 35 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER
5 36 CONVICTION.

5 37 1. A defendant who has been convicted of a felony
5 38 and who has not been required to submit a DNA sample
5 39 for DNA profiling may make a motion to the court for
5 40 an order to require that DNA analysis be performed on
5 41 evidence collected in the case for which the person
5 42 stands convicted.

5 43 2. The motion shall state the following:
5 44 a. The specific crimes for which the defendant
5 45 stands convicted in this case.
5 46 b. The facts of the underlying case, as proven at
5 47 trial or admitted to during a guilty plea proceeding.
5 48 c. Whether any of the charges include sexual abuse
5 49 or involve sexual assault, and if so, whether a sexual
5 50 assault examination was conducted and evidence
6 1 preserved, if known.
6 2 d. Whether identity was at issue or contested by
6 3 the defendant.
6 4 e. Whether the defendant offered an alibi, and if
6 5 so, testimony corroborating the alibi and, from whom.
6 6 f. Whether eyewitness testimony was offered, and
6 7 if so from whom.
6 8 g. Whether any issues of police or prosecutor
6 9 misconduct have been raised in the past or are being
6 10 raised by the motion.
6 11 h. The type of inculpatory evidence admitted into
6 12 evidence at trial or admitted to during a guilty plea
6 13 proceeding.
6 14 i. Whether blood testing or other biological
6 15 evidence testing was conducted previously in
6 16 connection with the case and, if so, by whom and to
6 17 the result, if known.
6 18 j. What biological evidence exists and, if known,
6 19 the agency or laboratory storing the evidence that the
6 20 defendant seeks to have tested.
6 21 k. Why the requested analysis of DNA evidence is
6 22 material to the issue in the case and not merely
6 23 cumulative or impeaching.
6 24 l. Why the DNA evidence would have changed the
6 25 outcome of the trial or invalidated a guilty plea if
6 26 DNA profiling had been conducted prior to the
6 27 conviction.

6 28 3. A motion filed under this section shall be
6 29 filed in the county where the defendant was convicted,
6 30 and notice of the motion shall be served by certified
6 31 mail upon the county attorney and, if known, upon the
6 32 state, local agency, or laboratory holding evidence
6 33 described in subsection 2, paragraph "k". The county
6 34 attorney shall have sixty days to file an answer to
6 35 the motion.

6 36 4. Any DNA profiling of the defendant or other
6 37 biological evidence testing conducted by the state or
6 38 by the defendant shall be disclosed and the results of
6 39 such profiling or testing described in the motion or
6 40 answer.

6 41 5. If the evidence requested to be tested was
6 42 previously subjected to DNA or other biological
6 43 analysis by either party, the court may order the
6 44 disclosure of the results of such testing, including
6 45 laboratory reports, notes, and underlying data, to the
6 46 court and the parties.

6 47 6. The court may order a hearing on the motion to
6 48 determine if evidence should be subjected to DNA
6 49 analysis.

6 50 7. The court shall grant the motion if all of the
7 1 following apply:
7 2 a. The evidence subject to DNA testing is
7 3 available and in a condition that will permit
7 4 analysis.
7 5 b. A sufficient chain of custody has been
7 6 established for the evidence.
7 7 c. The identity of the person who committed the
7 8 crime for which the defendant was convicted was a
7 9 significant issue in the crime for which the defendant
7 10 was convicted.
7 11 d. The evidence subject to DNA analysis is
7 12 material to, and not merely cumulative or impeaching
7 13 of, evidence included in the trial record or admitted
7 14 to at a guilty plea proceeding.
7 15 e. DNA analysis of the evidence would raise a
7 16 reasonable probability that the defendant would not
7 17 have been convicted if DNA profiling had been

7 18 available at the time of the conviction and had been
7 19 conducted prior to the conviction.

7 20 8. Upon the court granting a motion filed pursuant
7 21 to this section, DNA analysis of evidence shall be
7 22 conducted within the guidelines generally accepted by
7 23 the scientific community. The defendant shall provide
7 24 DNA samples for testing if requested by the state.

7 25 9. Results of DNA analysis conducted pursuant to
7 26 this section shall be reported to the parties and to
7 27 the court and may be provided to the board of parole,
7 28 department of corrections, and criminal and juvenile
7 29 justice agencies, as defined in section 692.1, for use
7 30 in the course of investigations and prosecutions, and
7 31 for consideration in connection with requests for
7 32 parole, pardon, reprieve, and commutation. DNA
7 33 samples obtained pursuant to this section may be
7 34 included in the DNA databank, and DNA profiles and DNA
7 35 records developed pursuant to this section may be
7 36 included in the DNA database.

7 37 10. A criminal or juvenile justice agency, as
7 38 defined in section 692.1, shall maintain DNA samples
7 39 and evidence that could be tested for DNA for a period
7 40 of three years beyond the limitations for the
7 41 commencement of criminal actions as set forth in
7 42 chapter 802. This section does not create a cause of
7 43 action for damages or a presumption of spoliation in
7 44 the event evidence is no longer available for testing.

7 45 11. If the court determines a defendant who files
7 46 a motion under this section is indigent, the defendant
7 47 shall be entitled to appointment of counsel as
7 48 provided in chapter 815.

7 49 12. If the court determines after DNA analysis
7 50 ordered pursuant to this section that the results
8 1 indicate conclusively that the DNA profile of the
8 2 defendant matches the profile from the analyzed
8 3 evidence used against the defendant, the court may
8 4 order the defendant to pay the costs of these
8 5 proceedings, including costs of all testing, court
8 6 costs, and costs of court-appointed counsel, if any.

8 7 Sec. 11. Section 229A.7, Code 2005, is amended by
8 8 adding the following new subsection:

8 9 NEW SUBSECTION. 5A. If the court or jury
8 10 determines that the respondent is a sexually violent
8 11 predator, the court shall order the respondent to
8 12 submit a DNA sample for DNA profiling pursuant to
8 13 section 81.4.

8 14 Sec. 12. Section 232.52, Code 2005, is amended by
8 15 adding the following new subsection:

8 16 NEW SUBSECTION. 10. The court shall order a
8 17 juvenile adjudicated a delinquent for an offense that
8 18 requires DNA profiling under section 81.2 to submit a
8 19 DNA sample for DNA profiling pursuant to section 81.4.

8 20 Sec. 13. Section 669.14, Code 2005, is amended by
8 21 adding the following new subsection:

8 22 NEW SUBSECTION. 15. Any claim arising from or
8 23 related to the collection of a DNA sample for DNA
8 24 profiling pursuant to section 81.4 or a DNA profiling
8 25 procedure performed by the division of criminal
8 26 investigation, department of public safety.

8 27 Sec. 14. Section 901.5, subsection 8A, Code 2005,
8 28 is amended to read as follows:

8 29 8A. a. The court shall order DNA profiling of a
8 30 defendant convicted of an offense that requires
8 31 profiling under section ~~13-10~~ 81.2.

8 32 b. Notwithstanding section ~~13-10~~ 81.2, the court
8 33 may order the defendant to provide a ~~physical specimen~~
8 34 DNA sample to be submitted for DNA profiling if
8 35 appropriate. In determining the appropriateness of
8 36 ordering DNA profiling, the court shall consider the
8 37 deterrent effect of DNA profiling, the likelihood of
8 38 repeated offenses by the defendant, and the
8 39 seriousness of the offense.

8 40 Sec. 15. Section 906.4, unnumbered paragraph 3,
8 41 Code 2005, is amended to read as follows:

8 42 ~~Notwithstanding section 13-10, the~~ The board may
8 43 order the defendant to provide a physical specimen to
8 44 be submitted for DNA profiling as a condition of
8 45 parole or work release, if ~~appropriate~~ a DNA profile
8 46 has not been previously conducted pursuant to chapter
8 47 81. In determining the appropriateness of ordering
8 48 DNA profiling, the board shall consider the deterrent

8 49 effect of DNA profiling, the likelihood of repeated
8 50 offenses by the defendant, and the seriousness of the
9 1 offense.

9 2 Sec. 16. 2002 Iowa Acts, chapter 1080, is
9 3 repealed.

9 4 Sec. 17. Section 13.10, Code 2005, is repealed.

9 5 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE
9 6 PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT.
9 7 A person convicted, adjudicated a delinquent, civilly
9 8 committed as a sexually violent predator, or found not
9 9 guilty by reason of insanity, prior to the effective
9 10 date of this Act, who would otherwise be required to
9 11 submit a DNA sample under this Act, and who is under
9 12 the custody, control, or jurisdiction of a supervising
9 13 agency, shall submit a DNA sample prior to being
9 14 released from the supervising agency's custody,
9 15 control, or jurisdiction.

9 16 Sec. 19. EFFECTIVE DATE. This division of this
9 17 Act, being deemed of immediate importance, takes
9 18 effect upon enactment.

9 19 DIVISION II

9 20 SEX OFFENDER REGISTRY AND TREATMENT

9 21 Sec. 20. Section 692A.1, subsection 8, Code 2005,
9 22 is amended to read as follows:

9 23 8. "Residence" means the place where a person
9 24 sleeps, which may include more than one location, and
9 25 may be mobile or transitory, including a shelter or
9 26 group home.

9 27 Sec. 21. Section 692A.2, Code 2005, is amended by
9 28 adding the following new subsection:

9 29 NEW SUBSECTION. 1A. If a person is required to
9 30 register for a period of ten years under subsection 1
9 31 and the period under subsection 1 has expired, the
9 32 person shall be required to remain on the registry if
9 33 the person has been sentenced to a special sentence as
9 34 required under section 903B.0A or 903B.0B, for a
9 35 period equal to the term of the special sentence.

9 36 Sec. 22. Section 692A.4, Code 2005, is amended to
9 37 read as follows:

9 38 692A.4 VERIFICATION OF ADDRESS AND TAKING OF
9 39 PHOTOGRAPH.

9 40 1. The address of a person required to register
9 41 under this chapter shall be verified annually as
9 42 follows:

9 43 a. On a date which falls within the month in which
9 44 the person was initially required to register, the
9 45 department shall mail a verification form to the last
9 46 reported address of the person. Verification forms
9 47 shall not be forwarded to the person who is required
9 48 to register under this chapter if the person no longer
9 49 resides at the address, but shall be returned to the
9 50 department.

10 1 b. The person shall complete and mail the
10 2 verification to the department within ten days of
10 3 receipt of the form.

10 4 c. The verification form shall be signed by the
10 5 person, and state the address at which the person
10 6 resides. If the person is in the process of changing
10 7 residences, the person shall state that fact as well
10 8 as the old and new addresses or places of residence.

10 9 2. Verification of address for a person who has
10 10 been convicted of an offense under the laws of this
10 11 state or of another state which would qualify the
10 12 person as a sexually violent predator shall be
10 13 accomplished in the same manner as in subsection 1,
10 14 except that the verification shall be done every three
10 15 months at times established by the department.

10 16 3. A photograph of a person required to register
10 17 under this chapter shall be updated, at a minimum,
10 18 annually. When the department mails the address
10 19 verification notice in subsection 1, the department
10 20 shall also enclose a form informing the person to
10 21 annually submit to being photographed by the sheriff
10 22 of the county of the person's residence within ten
10 23 days of receipt of the address verification form. The
10 24 sheriff shall send the updated photograph to the
10 25 department within ten days of the photograph being
10 26 taken and the department shall post the updated
10 27 photograph on the sex offender registry's web page.
10 28 The sheriff may require the person to submit to being
10 29 photographed by the sheriff more than once a year by

10 30 mailing another notice informing the person to submit
10 31 to being photographed.

10 32 Sec. 23. NEW SECTION. 692A.4A ELECTRONIC
10 33 MONITORING.

10 34 A person required to register under this chapter
10 35 who is placed on probation, parole, work release,
10 36 special sentence, or any other type of conditional
10 37 release, may be supervised by an electronic tracking
10 38 and monitoring system in addition to any other
10 39 conditions of supervision.

10 40 Sec. 24. Section 692A.5, subsection 1, Code 2005,
10 41 is amended by adding the following new paragraph:

10 42 NEW PARAGRAPH. i. Inform the person that the
10 43 person must, at a minimum, annually submit to being
10 44 photographed by the sheriff of the county of the
10 45 person's residence.

10 46 Sec. 25. Section 692A.13, subsection 3, Code 2005,
10 47 is amended to read as follows:

10 48 3. Any member of the public may contact a county
10 49 sheriff's office or police department to request
10 50 relevant information from the registry regarding a
11 1 specific person required to register under this
11 2 chapter. ~~The request for information shall be in~~

~~11 3 writing, and A person making a request for relevant~~
~~11 4 information may make the request by telephone, in~~
~~11 5 writing, or in person, and the request shall include~~
11 6 the name of the person and at least one of the
11 7 following identifiers pertaining to the person about
11 8 whom the information is sought:

- 11 9 a. The date of birth of the person.
11 10 b. The social security number of the person.
11 11 c. The address of the person.

11 12 A county sheriff or police department shall not
~~11 13 charge a fee relating to a request for relevant~~
~~11 14 information.~~

11 15 Sec. 26. Section 692A.13, subsection 2, paragraph
11 16 b, Code 2005, is amended to read as follows:

11 17 b. The general public, including public and
11 18 private agencies, organizations, public places, ~~public~~
~~11 19 and private schools,~~ child care facilities, religious
11 20 and youth organizations, neighbors, neighborhood
11 21 associations, community meetings, and employers.
11 22 Registry information may be distributed to the public
11 23 through printed materials, visual or audio press
11 24 releases, radio communications, or through a criminal
11 25 or juvenile justice agency's web page.

11 26 Sec. 27. Section 692A.13, Code 2005, is amended by
11 27 adding the following new subsection:

11 28 NEW SUBSECTION. 2A. When a person required to
11 29 register under this chapter moves into a school
11 30 district or moves within a school district, the county
11 31 sheriff of the county of the person's new residence
11 32 shall provide relevant information from the sex
11 33 offender registry to the administrative office of the
11 34 school district in which the person required to
11 35 register resides, and shall also provide relevant
11 36 information to any private school near the person's
11 37 residence.

11 38 Sec. 28. Section 692A.13, subsection 5, Code 2005,
11 39 is amended to read as follows:

11 40 5. Relevant information provided to the general
11 41 public may include the offender's name, address, a
11 42 photograph, locations frequented by the offender,
11 43 relevant criminal history information from the
11 44 registry, and any other relevant information.
11 45 Relevant information provided to the public shall not
11 46 include the identity of any victim. For purposes of

~~11 47 inclusion in the sex offender registry's web page or~~
~~11 48 dissemination to the general public, a conviction for~~
~~11 49 incest shall be disclosed as either a violation of~~
~~11 50 section 709.4 or 709.8.~~

12 1 Sec. 29. Section 903A.2, subsection 1, paragraph
12 2 a, Code 2005, is amended to read as follows:

12 3 a. Category "A" sentences are those sentences
12 4 which are not subject to a maximum accumulation of
12 5 earned time of fifteen percent of the total sentence
12 6 of confinement under section 902.12. To the extent
12 7 provided in subsection 5, category "A" sentences also
12 8 include life sentences imposed under section 902.1.
12 9 An inmate of an institution under the control of the
12 10 department of corrections who is serving a category

12 11 "A" sentence is eligible for a reduction of sentence
12 12 equal to one and two-tenths days for each day the
12 13 inmate demonstrates good conduct and satisfactorily
12 14 participates in any program or placement status
12 15 identified by the director to earn the reduction. The
12 16 programs include but are not limited to the following:

- 12 17 (1) Employment in the institution.
- 12 18 (2) Iowa state industries.
- 12 19 (3) An employment program established by the
12 20 director.
- 12 21 (4) A treatment program established by the
12 22 director.
- 12 23 (5) An inmate educational program approved by the
12 24 director.

12 25 However, an inmate required to participate in a sex
12 26 offender treatment program shall not be eligible for a
12 27 reduction of sentence unless the inmate participates
12 28 in and completes a sex offender treatment program
12 29 established by the director.

12 30 An inmate serving a category "A" sentence is
12 31 eligible for an additional reduction of sentence of up
12 32 to three hundred sixty-five days of the full term of
12 33 the sentence of the inmate for exemplary acts. In
12 34 accordance with section 903A.4, the director shall by
12 35 policy identify what constitutes an exemplary act that
12 36 may warrant an additional reduction of sentence.

12 37 DIVISION III
12 38 ENHANCED CRIMINAL PENALTIES AND
12 39 STATUTE OF LIMITATIONS

12 40 Sec. 30. Section 709.8, Code 2005, is amended to
12 41 read as follows:

12 42 709.8 LASCIVIOUS ACTS WITH A CHILD.

12 43 It is unlawful for any person ~~eighteen~~ sixteen
12 44 years of age or older to perform any of the following
12 45 acts with a child with or without the child's consent
12 46 unless married to each other, for the purpose of
12 47 arousing or satisfying the sexual desires of either of
12 48 them:

- 12 49 1. Fondle or touch the pubes or genitals of a
12 50 child.
- 13 1 2. Permit or cause a child to fondle or touch the
13 2 person's genitals or pubes.
- 13 3 3. Solicit a child to engage in a sex act or
13 4 solicit a person to arrange a sex act with a child.
- 13 5 4. Inflict pain or discomfort upon a child or
13 6 permit a child to inflict pain or discomfort on the
13 7 person.

13 8 Any person who violates a provision of this section
13 9 involving an act included in subsection 1 or 2 shall,
13 10 upon conviction, be guilty of a class "D" "C" felony.
13 11 ~~A person who violates a provision of this section and~~
13 12 ~~who is sentenced to a term of confinement shall also~~
13 13 ~~be sentenced to an additional term of parole or work~~
13 14 ~~release not to exceed two years. The board of parole~~
13 15 ~~shall determine whether the person should be released~~
13 16 ~~on parole or placed in a work release program. The~~
13 17 ~~sentence of an additional term of parole or work~~
13 18 ~~release supervision shall commence immediately upon~~
13 19 ~~the expiration of the preceding sentence and shall be~~
13 20 ~~under the terms and conditions as set out in chapter~~
13 21 ~~906. Violations of parole or work release shall be~~
13 22 ~~subject to the procedures set out in chapter 905 or~~
13 23 ~~908 or rules adopted under those chapters. The~~
13 24 ~~sentence of an additional term of parole or work~~
13 25 ~~release shall be consecutive to the original term of~~
13 26 ~~confinement. Any person who violates a provision of~~
13 27 this section involving an act included in subsection 3
13 28 or 4 shall, upon conviction, be guilty of a class "D"
13 29 felony.

13 30 Sec. 31. Section 802.2, Code 2005, is amended to
13 31 read as follows:

13 32 802.2 SEXUAL ABUSE == FIRST, SECOND, OR THIRD
13 33 DEGREE.

- 13 34 1. An information or indictment for sexual abuse
13 35 in the first, second, or third degree committed on or
13 36 with a person who is under the age of eighteen years
13 37 shall be found within ten years after the person upon
13 38 whom the offense is committed attains eighteen years
13 39 of age, or if the identity of the person against whom
13 40 the information or indictment is sought is established
13 41 through the use of a DNA profile, an information or

13 42 indictment shall be found within three years from the
13 43 date the identity of the person is identified by the
13 44 person's DNA profile, whichever is later.

13 45 2. An information or indictment for any other
13 46 sexual abuse in the first, second, or third degree
13 47 shall be found within ten years after its commission,
13 48 or if the identity of the person against whom the
13 49 information or indictment is sought is established
13 50 through the use of a DNA profile, an information or
14 1 indictment shall be found within three years from the
14 2 date the identity of the person is identified by the
14 3 person's DNA profile, whichever is later.

14 4 3. As used in this section, "identified" means a
14 5 person's legal name is known and the person has been
14 6 determined to be the source of the DNA.

14 7 Sec. 32. Section 901.5, Code 2005, is amended by
14 8 adding the following new subsection:

14 9 NEW SUBSECTION. 13. In addition to any other
14 10 sentence or other penalty imposed against the
14 11 defendant, the court shall impose a special sentence
14 12 if required under section 903B.0A or 903B.0B.

14 13 Sec. 33. NEW SECTION. 902.15 ENHANCED PENALTY ==
14 14 SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.

14 15 1. A person commits a class "A" felony if the
14 16 person commits a second or subsequent offense
14 17 involving any combination of the following offenses:
14 18 a. Sexual abuse in the second degree in violation
14 19 of section 709.3.
14 20 b. Sexual abuse in the third degree in violation
14 21 of section 709.4.

14 22 c. Lascivious acts with a child in violation of
14 23 section 709.8, subsection 1 or 2.

14 24 2. In determining if a violation charged is a
14 25 second or subsequent offense for purposes of criminal
14 26 sentencing in this section, each previous violation on
14 27 which conviction or deferral of judgment was entered
14 28 prior to the date of the violation charged shall be
14 29 considered and counted as a separate previous offense,
14 30 regardless of whether the previous offense occurred
14 31 before, on, or after the effective date of this Act.
14 32 Convictions or the equivalent of deferred judgments
14 33 for violations in any other states under statutes
14 34 substantially corresponding to the offenses listed in
14 35 subsection 1 shall be counted as previous offenses.
14 36 The courts shall judicially notice the statutes of
14 37 other states which define offenses substantially
14 38 equivalent to the offenses listed in subsection 1 and
14 39 can therefore be considered corresponding statutes.

14 40 Sec. 34. NEW SECTION. 903B.0A SPECIAL SENTENCE
14 41 == CLASS "B" OR CLASS "C" FELONIES.

14 42 A person convicted of a class "C" felony or greater
14 43 offense under chapter 709, or a class "C" felony under
14 44 section 728.12, shall also be sentenced, in addition
14 45 to any other punishment provided by law, to a special
14 46 sentence committing the person into the custody of the
14 47 director of the Iowa department of corrections for the
14 48 rest of the person's life, with eligibility for parole
14 49 as provided in chapter 906. The special sentence
14 50 imposed under this section shall commence upon

15 1 completion of the sentence imposed under any
15 2 applicable criminal sentencing provisions for the
15 3 underlying criminal offense and the person shall begin
15 4 the sentence under supervision as if on parole. The
15 5 person shall be placed on the corrections continuum in
15 6 chapter 901B, and the terms and conditions of the
15 7 special sentence, including violations, shall be
15 8 subject to the same set of procedures set out in
15 9 chapters 901B, 905, 906, and chapter 908, and rules
15 10 adopted under those chapters for persons on parole.
15 11 The revocation of release shall not be for a period
15 12 greater than two years upon any first revocation, and
15 13 five years upon any second or subsequent revocation.
15 14 A special sentence shall be considered a category "A"
15 15 sentence for purposes of calculating earned time under
15 16 section 903A.2.

15 17 Sec. 35. NEW SECTION. 903B.0B SPECIAL SENTENCE
15 18 == CLASS "D" FELONIES OR MISDEMEANORS.

15 19 A person convicted of a misdemeanor or a class "D"
15 20 felony offense under chapter 709, section 726.2, or
15 21 section 728.12 shall also be sentenced, in addition to
15 22 any other punishment provided by law, to a special

15 23 sentence committing the person into the custody of the
15 24 director of the Iowa department of corrections for a
15 25 period of ten years, with eligibility for parole as
15 26 provided in chapter 906. The special sentence imposed
15 27 under this section shall commence upon completion of
15 28 the sentence imposed under any applicable criminal
15 29 sentencing provisions for the underlying criminal
15 30 offense and the person shall begin the sentence under
15 31 supervision as if on parole. The person shall be
15 32 placed on the corrections continuum in chapter 901B,
15 33 and the terms and conditions of the special sentence,
15 34 including violations, shall be subject to the same set
15 35 of procedures set out in chapters 901B, 905, 906, and
15 36 908, and rules adopted under those chapters for
15 37 persons on parole. The revocation of release shall
15 38 not be for a period greater than two years upon any
15 39 first revocation, and five years upon any second or
15 40 subsequent revocation. A special sentence shall be
15 41 considered a category "A" sentence for purposes of
15 42 calculating earned time under section 903A.2.

15 43 Sec. 36. Section 903B.1, subsection 3, Code 2005,
15 44 is amended by striking the subsection.

15 45 Sec. 37. Section 906.15, unnumbered paragraph 1,
15 46 Code 2005, is amended to read as follows:

15 47 Unless sooner discharged, a person released on
15 48 parole shall be discharged when the person's term of
15 49 parole equals the period of imprisonment specified in
15 50 the person's sentence, less all time served in
16 1 confinement. Discharge from parole may be granted
16 2 prior to such time, when an early discharge is
16 3 appropriate. The board shall periodically review all
16 4 paroles, and when the board determines that any person
16 5 on parole is able and willing to fulfill the
16 6 obligations of a law-abiding citizen without further
16 7 supervision, the board shall discharge the person from
16 8 parole. A parole officer shall periodically review
16 9 all paroles assigned to the parole officer, and when
16 10 the parole officer determines that any person assigned
16 11 to the officer is able and willing to fulfill the
16 12 obligations of a law-abiding citizen without further
16 13 supervision, the officer may discharge the person from
16 14 parole after notification and approval of the district
16 15 director and notification of the board of parole. In
16 16 any event, discharge from parole shall terminate the
16 17 person's sentence. If a person has been sentenced to
16 18 a special sentence under section 903B.0A or 903B.0B,
16 19 the person may be discharged early from the sentence
16 20 in the same manner as any other person on parole.

16 21 However, a person convicted of a violation of section
16 22 709.3, 709.4, or 709.8 committed on or with a child,
16 23 or a person serving a sentence under section 902.12,
16 24 shall not be discharged from parole until the person's
16 25 term of parole equals the period of imprisonment
16 26 specified in the person's sentence, less all time
16 27 served in confinement.

16 28 Sec. 38. Section 908.5, Code 2005, is amended to
16 29 read as follows:

16 30 908.5 DISPOSITION.

16 31 1. If a violation of parole is established, the
16 32 administrative parole judge may continue the parole
16 33 with or without any modification of the conditions of
16 34 parole. The administrative parole judge may revoke
16 35 the parole and require the parolee to serve the
16 36 sentence originally imposed, or may revoke the parole
16 37 and reinstate the parolee's work release status.

16 38 2. If the person is serving a special sentence
16 39 under chapter 903B, the administrative parole judge
16 40 may revoke the release. Upon the revocation of
16 41 release, the person shall not serve the entire length
16 42 of the special sentence imposed, and the revocation
16 43 shall be for a period not to exceed two years in a
16 44 correctional institution upon a first revocation and
16 45 for a period not to exceed five years in a
16 46 correctional institution upon a second or subsequent
16 47 revocation.

16 48 3. The order of the administrative parole judge
16 49 shall contain findings of fact, conclusions of law,
16 50 and a disposition of the matter.

17 1 DIVISION IV
17 2 DEATH PENALTY

17 3 Sec. 39. Section 13B.4, Code 2005, is amended by

17 4 adding the following new subsection:
17 5 NEW SUBSECTION. 6A. The state public defender
17 6 shall perform all of the following duties with respect
17 7 to the appointment of counsel for indigent persons in
17 8 cases in which a sentence of death may be or is to be
17 9 imposed:
17 10 a. Provide or contract with attorneys for
17 11 appointment as lead counsel and cocounsel to provide
17 12 legal services in cases where a person is charged with
17 13 murder in the first degree, kidnapping, and sexual
17 14 abuse under section 902.15, and the state has given
17 15 notice of intent to seek the death penalty or in cases
17 16 in which a sentence of death is to be imposed.
17 17 b. Conduct or sponsor specialized training
17 18 programs for attorneys representing persons who may be
17 19 executed.
17 20 Sec. 40. Section 216A.133, Code 2005, is amended
17 21 by adding the following new subsection:
17 22 NEW SUBSECTION. 8. Review the effects of the
17 23 reinstatement of the death penalty on arrest,
17 24 prosecution, conviction, and incarceration rates; law
17 25 enforcement duties and ability to obtain evidence
17 26 necessary for arrests; court dockets and workload;
17 27 prison space; recidivism rates of persons charged with
17 28 crimes of violence against persons; and other aspects
17 29 of the criminal justice system. Based on the review
17 30 and other factors deemed relevant, the council shall
17 31 make findings and develop recommendations resulting
17 32 from those findings. Commencing January 1, 2007, the
17 33 council shall report its findings and any related
17 34 recommendations annually to the governor and to the
17 35 general assembly.
17 36 Sec. 41. NEW SECTION. 602.10111A QUALIFICATIONS
17 37 OF COUNSEL IN DEATH PENALTY CASES.
17 38 The supreme court shall prescribe rules which
17 39 establish minimum standards and procedures by which
17 40 attorneys may become qualified to provide legal
17 41 services as lead counsel in cases in which a sentence
17 42 of death may be or is to be imposed.
17 43 Sec. 42. NEW SECTION. 812A.1 PROCEDURE TO
17 44 DETERMINE SANITY OF CONDEMNED INMATE.
17 45 1. At any time prior to execution of an inmate
17 46 under section 902.1, if the director of the department
17 47 of corrections or the counsel for a person who is
17 48 under a sentence of execution has cause to believe
17 49 that the inmate is suffering from such a diseased or
17 50 deranged condition of the mind as to prevent the
18 1 defendant from knowing the nature and quality of the
18 2 act the defendant has been convicted of, or from
18 3 understanding that trial on the offense has taken
18 4 place and that execution proceedings are about to take
18 5 place, or to otherwise cause the defendant to lack the
18 6 capacity to understand the sentence which has been
18 7 imposed and to participate in any legal proceedings
18 8 relating to the sentence, the director or counsel may
18 9 file a request with the court that issued the warrant
18 10 for execution for a determination of the inmate's
18 11 sanity. If the district court determines that there
18 12 is not sufficient reason to believe that the inmate is
18 13 insane, the court shall enter an order denying the
18 14 request and shall state the grounds for denying the
18 15 request. If the court believes that there is
18 16 sufficient reason to believe that the inmate is
18 17 insane, the court shall suspend the execution and
18 18 conduct a hearing to determine the sanity of the
18 19 inmate.
18 20 2. At the hearing, the court shall determine the
18 21 issue of the inmate's sanity. Prior to the hearing,
18 22 the court shall appoint two licensed physicians or
18 23 licensed psychologists, or one licensed physician and
18 24 one licensed psychologist, who are qualified by
18 25 training and practice, for purposes of conducting a
18 26 psychiatric or psychological examination of the
18 27 inmate. The physicians or psychologists shall examine
18 28 the inmate and report any findings in writing to the
18 29 court within ten days after the order of examination
18 30 is issued. The inmate shall have the right to present
18 31 evidence and cross-examine any witnesses at the
18 32 hearing. Any statement made by the inmate during the
18 33 course of any examination provided for in this
18 34 section, whether or not the inmate consents to the

18 35 examination, shall not be admitted into evidence
18 36 against the inmate in any criminal proceeding for
18 37 purposes other than a determination of the inmate's
18 38 sanity.

18 39 3. If, at the conclusion of a hearing held
18 40 pursuant to this section, the court determines that
18 41 the inmate is sane, the court shall enter an order
18 42 setting a date for the inmate's execution, which shall
18 43 be carried into effect in the same manner as provided
18 44 in the original sentence. A copy of the order shall
18 45 be sent to the director of the department of
18 46 corrections and the governor.

18 47 4. If, at the conclusion of a hearing held
18 48 pursuant to this section, the court determines that
18 49 the inmate is insane, the court shall suspend the
18 50 execution until further order. At any time after
19 1 issuance of the order, if the court has sufficient
19 2 reason to believe that the inmate has become sane, the
19 3 court shall again determine the sanity of the inmate
19 4 as provided by this section. Proceedings pursuant to
19 5 this section may continue to be held at such times as
19 6 the court orders until it is either determined that
19 7 the inmate is sane or incurably insane.

19 8 Sec. 43. NEW SECTION. 814.28 REVIEW OF DEATH
19 9 SENTENCE.

19 10 1. In a case in which a sentence of death is
19 11 imposed, the supreme court shall automatically review
19 12 the judgment and sentence. The court's review of the
19 13 case shall be de novo. The case shall not be
19 14 transferred to the court of appeals.

19 15 2. A review by the supreme court of a judgment and
19 16 sentence imposing the punishment of death has priority
19 17 over all other criminal and other actions pending
19 18 before the supreme court.

19 19 3. The supreme court shall review the trial and
19 20 judgment, and shall separately review the sentencing
19 21 proceeding. Upon determining that errors did not
19 22 occur at the trial requiring reversal or modification
19 23 of the judgment, the supreme court shall proceed to
19 24 determine if the sentence of death is lawfully
19 25 imposed. In its review of the sentencing proceeding
19 26 the supreme court shall determine all of the
19 27 following:

19 28 a. Whether the sentence of death was imposed
19 29 capriciously or under the influence of prejudice or
19 30 other arbitrary factor.

19 31 b. Whether the special verdicts returned under
19 32 section 901.11 are supported by the evidence.

19 33 c. Whether the sentence of death is excessive or
19 34 disproportionate to the penalty imposed in similar
19 35 cases, considering both the crime and the defendant.

19 36 4. If the supreme court determines that the
19 37 sentence of death was not lawfully imposed, the court
19 38 shall set aside the sentence and shall remand the case
19 39 to the trial court for a second sentencing proceeding
19 40 to determine if the imposition of death is warranted.

19 41 5. If the supreme court affirms the judgment and
19 42 sentence of death, the clerk of the supreme court
19 43 shall certify the judgment of the supreme court under
19 44 the seal of the court to the clerk of the trial court.

19 45 Sec. 44. Section 815.10, Code 2005, is amended by
19 46 adding the following new subsection:

19 47 NEW SUBSECTION. 1A. If two attorneys have not
19 48 already been appointed pursuant to section 13B.4 or
19 49 13B.9, the court shall appoint, for each indigent
19 50 person who is charged with murder in the first degree
20 1 and in which a notice of intent to seek the death
20 2 penalty has been filed, two attorneys who are
20 3 qualified under section 602.10111A to represent the
20 4 person in the murder proceedings and in all state
20 5 legal proceedings which take place from the time the
20 6 person is indicted or arraigned until the person is
20 7 sentenced on the charge. In addition, if at any point
20 8 in federal postconviction proceedings an indigent
20 9 person is not afforded court-appointed counsel, the
20 10 state shall provide counsel to the person to present
20 11 any claims determined meritorious by the federal court
20 12 if the person is not otherwise represented by legal
20 13 counsel. Only private attorneys and public defenders
20 14 who are qualified to provide representation in cases
20 15 in which the death penalty may be imposed are eligible

20 16 for appointment or assignment to a case in which the
20 17 death penalty may be imposed.

20 18 Sec. 45. NEW SECTION. 901.11 MURDER PROCEEDINGS
20 19 == REQUEST FOR DEATH PENALTY == PENALTY PROCEEDINGS.

20 20 1. If a notice of intent to seek the death penalty
20 21 has been filed, objections to the imposition of the
20 22 death penalty based upon allegations that a defendant
20 23 was mentally retarded or mentally ill at the time of
20 24 the commission of the offense shall be raised within
20 25 the time provided for the filing of pretrial motions
20 26 under rule of criminal procedure 2.11, Iowa court
20 27 rules. The court may, for good cause shown, allow
20 28 late filing of the motion. Hearing on the motion
20 29 shall be held prior to trial and the burden of proof
20 30 shall be on the defendant to prove mental retardation
20 31 or mental illness by a preponderance of the evidence.
20 32 However, a rebuttable presumption of mental
20 33 retardation arises if a defendant has an intelligence
20 34 quotient of seventy or below. If the court finds that
20 35 the defendant is mentally retarded, the defendant, if
20 36 convicted of murder in the first degree, shall not be
20 37 sentenced to death but shall be sentenced to life
20 38 imprisonment in the manner provided in section 902.1,
20 39 subsection 1. A finding by the court that the
20 40 evidence presented by the defendant at the hearing
20 41 does not preclude the imposition of the death penalty
20 42 under this section and section 902.15 shall not
20 43 preclude the introduction of evidence of mental
20 44 retardation or mental illness during the penalty
20 45 proceeding. If the court finds that evidence of
20 46 mental retardation or mental illness does not preclude
20 47 imposition of the death penalty, evidence of mental
20 48 retardation or mental illness may be reviewed by the
20 49 jury in the penalty proceeding and the jury shall not
20 50 be informed of the finding in the initial proceeding

21 1 at any time during the penalty proceeding.

21 2 2. If at the trial on a charge of murder in the
21 3 first degree, the state intends to request that the
21 4 death penalty be imposed under section 902.1,
21 5 subsection 2, the prosecutor shall file a notice of
21 6 intent to seek the death penalty, listing the
21 7 additional factors enumerated under section 902.15
21 8 that the state intends to establish in support of
21 9 imposition of the death penalty, at the time of and as
21 10 part of the information or indictment filed in the
21 11 case.

21 12 3. If a notice of intent to seek the death penalty
21 13 has been filed, the trial shall be conducted in
21 14 bifurcated proceedings before the same trier of fact.
21 15 During the initial proceeding, the jury, or the court,
21 16 if the defendant waives the right to a jury trial,
21 17 shall decide only whether the defendant is guilty or
21 18 not guilty of murder in the first degree, kidnapping,
21 19 and sexual abuse.

21 20 a. If, in the initial proceeding, the court or
21 21 jury finds the defendant guilty of, or the defendant
21 22 pleads guilty to, an offense other than murder in the
21 23 first degree, kidnapping, and sexual abuse, the court
21 24 shall sentence the defendant in accordance with the
21 25 sentencing procedures set forth in rule of criminal
21 26 procedure 2.23, Iowa court rules, and chapters 901
21 27 through 909, which are applicable to the offense.

21 28 b. If the court or jury finds the defendant guilty
21 29 of, or the defendant pleads guilty to, murder in the
21 30 first degree, kidnapping, and sexual abuse but the
21 31 prosecuting attorney waives the death penalty, the
21 32 court shall sentence the defendant to life
21 33 imprisonment in accordance with the sentencing
21 34 procedures set forth in rule of criminal procedure
21 35 2.23, Iowa court rules, and chapters 901 through 909,
21 36 which are applicable to convictions of murder in the
21 37 first degree, kidnapping, and sexual abuse.

21 38 c. If the court or jury finds the defendant guilty
21 39 of murder in the first degree, kidnapping, and sexual
21 40 abuse, or a defendant enters a plea of guilty in the
21 41 initial proceeding, and the prosecuting attorney does
21 42 not waive imposition of the death penalty, a penalty
21 43 proceeding shall be held in the manner provided in
21 44 subsections 4 through 12.

21 45 4. No sooner than twenty-four hours after a
21 46 verdict of guilty or a plea of guilty to the charge of

21 47 murder in the first degree, kidnapping, and sexual
21 48 abuse is returned in the initial proceeding, a penalty
21 49 proceeding shall be held to determine whether the
21 50 defendant shall be sentenced to death or to life
22 1 imprisonment. The proceeding shall be conducted in
22 2 the trial court before the trial jury, or the court if
22 3 the defendant has waived the right to a jury trial or
22 4 has waived the right for the proceeding to be before
22 5 the trial jury. Both the state and the defendant
22 6 shall have the right to present opening statements at
22 7 the commencement of the penalty proceedings. In the
22 8 proceeding, evidence relevant to the existence of any
22 9 aggravating or mitigating circumstances may be
22 10 presented as follows:

22 11 a. The state or the defendant may present evidence
22 12 relevant to the conviction of murder in the first
22 13 degree and any of the additional factors enumerated in
22 14 section 902.15 and any aggravating circumstances other
22 15 than juvenile delinquency adjudications for offenses
22 16 which carry penalties equivalent to the penalties
22 17 imposed for simple or serious misdemeanors. The state
22 18 may introduce evidence of the actual harm caused by
22 19 the commission of the murder including, but not
22 20 limited to, evidence relating to the life of the
22 21 victim and the impact of the loss of the victim to the
22 22 victim's family and society.

22 23 b. The defendant may present evidence that the
22 24 defendant was mentally retarded at the time of the
22 25 commission of the offense. The burden of proof shall
22 26 be on the defendant to prove mental retardation by a
22 27 preponderance of the evidence. However, a rebuttable
22 28 presumption of mental retardation arises if a
22 29 defendant has an intelligence quotient of seventy or
22 30 below.

22 31 c. The state or the defendant may present evidence
22 32 relevant to any mitigating circumstances which may
22 33 exist. Mitigating circumstances may include the
22 34 following circumstances:

22 35 (1) The defendant was under the influence of an
22 36 extreme mental or emotional disturbance insufficient
22 37 to constitute a defense.

22 38 (2) The age of the defendant at the time of the
22 39 murder.

22 40 (3) The defendant's capacity to appreciate the
22 41 wrongfulness of the defendant's conduct and to conform
22 42 that conduct to the requirements of law was
22 43 significantly impaired as a result of a mental disease
22 44 or defect or mental retardation, but not to a degree
22 45 sufficient to constitute a defense.

22 46 (4) The defendant has no significant history of
22 47 prior adult criminal activity.

22 48 (5) The defendant acted under extreme duress or
22 49 under the substantial domination of another person.

22 50 (6) The defendant did not directly commit the
23 1 murder and the defendant did not intend to kill or
23 2 anticipate that lethal force would be used.

23 3 (7) Any other factor which is relevant to the
23 4 defendant's character or record or to the
23 5 circumstances of the offense.

23 6 d. The state and the defendant or the defendant's
23 7 counsel shall be permitted to present and cross=
23 8 examine witnesses and present arguments for or against
23 9 a sentence of death. Evidence regarding aggravating
23 10 and mitigating circumstances shall not be governed by
23 11 the rules governing admissibility of evidence, except
23 12 that introduction of evidence secured in violation of
23 13 the Constitution of the United States or of the
23 14 Constitution of the State of Iowa shall not be
23 15 permitted.

23 16 5. At the conclusion of presentation of evidence
23 17 in the penalty proceeding, the state and the defendant
23 18 or the defendant's counsel shall be permitted to make
23 19 closing arguments, including any rebuttal arguments,
23 20 in the same manner as in the initial proceeding and
23 21 the following issues shall be determined by the jury
23 22 or the court, if there is no jury:

23 23 a. Whether the aggravating circumstance or
23 24 circumstances outweigh any one or more mitigating
23 25 circumstances.

23 26 b. Whether the defendant shall be sentenced to
23 27 death.

23 28 6. A recommendation for a sentence of death shall
23 29 not be permitted if the recommendation is based on the
23 30 race, color, religious beliefs, national origin, or
23 31 sex of the defendant or any victim. After submission
23 32 of the issues, but prior to the return of a finding in
23 33 the penalty proceeding, if the matter is tried before
23 34 a jury, the court shall instruct the jury that in
23 35 considering whether a sentence of death is justified,
23 36 it shall not consider race, color, religious beliefs,
23 37 national origin, or sex of the defendant or of any
23 38 victim. The court shall further instruct the jury
23 39 that it shall not return a sentence of death unless it
23 40 concludes that such a sentence would be recommended no
23 41 matter what the race, color, religious beliefs,
23 42 national origin, or sex of the defendant or any victim
23 43 may be.

23 44 7. After submission of the issues, but prior to
23 45 the commencement of the jury deliberations in the
23 46 penalty proceeding, the court shall instruct the jury
23 47 that if the defendant is not sentenced to death, the
23 48 court is required by law to impose a sentence of
23 49 imprisonment until death without parole. The court
23 50 shall further instruct the jury that the sentence of
24 1 imprisonment until death without parole is required by
24 2 law if the jury fails to reach a unanimous verdict
24 3 recommending a sentence of death.

24 4 8. Concurrently with the return of the findings on
24 5 the issues submitted under subsection 5, the jury, or
24 6 the court if there is no jury, shall return special
24 7 verdicts as follows:

24 8 a. Which aggravating circumstances were
24 9 established and were considered in reaching the
24 10 verdict.

24 11 b. Which mitigating circumstances were established
24 12 and were considered in reaching the verdict returned
24 13 on the issue specified in subsection 5, paragraph "a".

24 14 9. If the jury, or the court if there is no jury,
24 15 returns a unanimous affirmative finding on each of the
24 16 issues submitted under subsection 5, paragraphs "a"
24 17 and "b", the court shall enter a judgment of
24 18 conviction and shall sentence the defendant to death
24 19 as provided in section 902.1, subsection 2.

24 20 10. However, if evidence that the defendant was
24 21 not a major participant in the commission of the
24 22 murder and that the defendant's conduct did not
24 23 manifest a reckless indifference to human life is
24 24 presented to the jury, or the court, if there is no
24 25 jury, the jury or the court shall also return a
24 26 special verdict on the issue. If the jury unanimously
24 27 determines, or the court, if there is no jury, finds
24 28 that a preponderance of evidence exists that shows
24 29 that the defendant was not a major participant in the
24 30 commission of the murder and that the defendant's
24 31 conduct did not manifest a reckless indifference to
24 32 human life, the court shall enter a judgment of
24 33 conviction and shall sentence the defendant to life
24 34 imprisonment as provided in section 902.1, subsection
24 35 1, even if the jury or the court returns unanimous
24 36 affirmative findings on each of the issues submitted
24 37 under subsection 5.

24 38 11. If the jury, or the court, if there is no
24 39 jury, returns a negative finding on any of the issues
24 40 submitted under subsection 5, paragraphs "a" and "b",
24 41 the court shall enter a judgment of conviction and
24 42 shall sentence the defendant to life imprisonment as
24 43 provided in section 902.1, subsection 1.

24 44 12. After a verdict has been rendered it shall be
24 45 recorded on the jury verdict form and shall be read
24 46 and recorded in open court. The jurors shall be
24 47 collectively asked by the court whether the verdict
24 48 returned is their true and correct verdict. Even
24 49 though no juror makes any declaration to the contrary,
24 50 the jury shall, if either party so requests, be polled
25 1 and each juror shall be separately asked whether the
25 2 verdict rendered by the jury foreperson is the juror's
25 3 true and correct verdict. If, upon either the
25 4 collective or the separate inquiry, any juror denies
25 5 that the verdict is the juror's verdict, the court
25 6 shall refuse to accept the verdict. The court may
25 7 direct inquiry or permit inquiry by counsel to
25 8 ascertain whether any juror has been subjected to

25 9 coercion or has become confused during the jury
25 10 deliberation process. The court may, as appropriate,
25 11 direct the jury to resume deliberation in the case.
25 12 If no disagreement on the verdict is expressed by any
25 13 of the jurors, the court shall discharge the jury.
25 14 13. This section shall not apply to a defendant
25 15 who was under the age of eighteen at the time the
25 16 offense was committed.
25 17 Sec. 46. Section 902.1, Code 2005, is amended to
25 18 read as follows:
25 19 902.1 CLASS "A" FELONY.
25 20 1. ~~Upon~~ Except as otherwise provided in subsection
25 21 2, upon a plea of guilty, a verdict of guilty, or a
25 22 special verdict upon which a judgment of conviction of
25 23 a class "A" felony may be rendered, the court shall
25 24 enter a judgment of conviction and shall commit the
25 25 defendant into the custody of the director of the Iowa
25 26 department of corrections for the rest of the
25 27 defendant's life. Nothing in the Iowa corrections
25 28 code pertaining to deferred judgment, deferred
25 29 sentence, suspended sentence, or reconsideration of
25 30 sentence applies to a sentence of life imprisonment
25 31 for a class "A" felony, and a person convicted of a
25 32 class "A" felony and sentenced to life imprisonment
25 33 shall not be released on parole unless the governor
25 34 commutes the sentence to a term of years.
25 35 2. Upon return of a plea or verdict of guilty to
25 36 the offense of murder in the first degree under
25 37 section 707.2, kidnapping, and sexual abuse, and a
25 38 return of a verdict in favor of a sentence of death in
25 39 a penalty proceeding conducted as provided in section
25 40 901.11, the court shall enter a judgment of conviction
25 41 and shall commit the defendant into the custody of the
25 42 director of the Iowa department of corrections. The
25 43 sentence shall be carried out by the administration of
25 44 a lethal injection pursuant to rules adopted by the
25 45 board of corrections. If a defendant, for whom a
25 46 warrant of execution is issued, is pregnant, the
25 47 execution shall not take place until after the
25 48 defendant is no longer pregnant. If a defendant, for
25 49 whom a warrant of execution is issued, is suffering
25 50 from such a diseased or deranged condition of the mind
26 1 as to prevent the defendant from knowing the nature
26 2 and quality of the act the defendant has been
26 3 convicted of, or from understanding that trial on the
26 4 offense has taken place and that execution proceedings
26 5 are about to take place, or otherwise causes the
26 6 defendant to lack the capacity to understand the
26 7 sentence which has been imposed and to participate in
26 8 any legal proceedings relating to the sentence, the
26 9 execution shall not take place until after the
26 10 defendant's capacity is restored. If the director of
26 11 the department of corrections or the defendant's
26 12 counsel files a request with the court which issued
26 13 the warrant of execution, alleging that the defendant
26 14 suffers from such a diseased or deranged condition, a
26 15 hearing on the matter shall be held in the manner
26 16 provided in section 812A.1. If a defendant was under
26 17 the age of eighteen at the time the offense was
26 18 committed, the defendant shall be sentenced as
26 19 provided in subsection 1. For the purposes of this
26 20 section, "lethal injection" means a continuous
26 21 intravenous injection of a lethal substance sufficient
26 22 to cause death.
26 23 Sec. 47. NEW SECTION. 902.15 FIRST DEGREE MURDER
26 24 == ADDITIONAL FACTORS.
26 25 A person who commits murder in the first degree,
26 26 who is not mentally retarded or mentally ill, and who
26 27 is age eighteen or older at the time the offense is
26 28 committed, shall be eligible for a sentence of death
26 29 under section 902.1, subsection 2, if the person also
26 30 kidnaps and commits sexual abuse against the murder
26 31 victim who was a minor.
26 32 For purposes of this section, "mentally retarded"
26 33 means significant subaverage general intellectual
26 34 functioning accompanied by significant deficits or
26 35 impairments in adaptive functioning manifested in the
26 36 developmental period, but no later than the age of
26 37 eighteen years, and accompanied by deficits in
26 38 adaptive behavior.
26 39 For purposes of this section, "mentally ill" means

26 40 the condition of a person who is suffering from a
26 41 chronic and persistent serious mental disease or
26 42 disorder and who, by reason of that condition, lacks
26 43 sufficient judgment to make responsible decisions
26 44 regarding treatment and is reasonably likely to injure
26 45 the person's self or others who may come into contact
26 46 with the person if the person is allowed to remain at
26 47 liberty without treatment.

26 48 Sec. 48. NEW SECTION. 902.16 DATA COLLECTION FOR
26 49 DEATH PENALTY.

26 50 1. The supreme court shall collect data on all
27 1 murder charges in which the death penalty is or was
27 2 not waived, which are filed and processed in the
27 3 courts in this state. This data may be used by the
27 4 supreme court to determine whether death sentences
27 5 imposed are excessive or disproportionate, or under
27 6 the influence of prejudice as a result of racial
27 7 discrimination under section 814.28. The court shall
27 8 make this data available to litigants in death penalty
27 9 cases.

27 10 2. Data collected by public officials concerning
27 11 factors relevant to the imposition of the death
27 12 sentence shall be made publicly available.

27 13 Sec. 49. NEW SECTION. 903C.1 EXECUTIONS ==
27 14 REFUSAL TO PERFORM.

27 15 An employee of the state who may lawfully perform,
27 16 assist, or participate in the execution of a person
27 17 pursuant to section 902.1, and rules adopted by the
27 18 department of corrections, shall not be required to
27 19 perform, assist, or participate in the execution.
27 20 State employees who refuse to perform, assist, or
27 21 participate in the execution of a person shall not be
27 22 discriminated against in any way, including, but not
27 23 limited to, employment, promotion, advancement,
27 24 transfer, licensing, education, training, or the
27 25 granting of any privileges or appointments because of
27 26 the refusal to perform, assist, or participate in the
27 27 execution.

27 28 Sec. 50. Section 904.105, Code 2005, is amended by
27 29 adding the following new subsection:

27 30 NEW SUBSECTION. 9A. Adopt rules pursuant to
27 31 chapter 17A pertaining to executions of persons
27 32 convicted of murder in the first degree. Rules
27 33 adopted shall include, but are not limited to, rules
27 34 permitting the witnessing of executions by members of
27 35 the public and the victim's family. Invitations to
27 36 witness an execution shall at least be extended to the
27 37 following representatives of the news media:

27 38 a. A representative from a wire service serving
27 39 Iowa.

27 40 b. A representative from a broadcasting network
27 41 serving Iowa.

27 42 c. A representative from a television station
27 43 located in Iowa.

27 44 d. A representative from a radio station located
27 45 in Iowa.

27 46 e. A representative from a daily newspaper
27 47 published in Iowa.

27 48 f. A representative from a weekly newspaper
27 49 published in Iowa.

27 50 g. A representative from the news media from the
28 1 community in which the condemned person resided, if
28 2 that community is located in Iowa.

28 3 Sec. 51. Rules of criminal procedure, Iowa court
28 4 rules, are amended by adding the following four
28 5 sections of this Act.

28 6 Sec. 52. NEW RULE. 2. DEATH PENALTY ==
28 7 PROCEDURE.

28 8 2.____(1) If a notice of intent to seek the death
28 9 penalty has been filed, objections to the imposition
28 10 of the death penalty based upon allegations that a
28 11 defendant was mentally retarded at the time of the
28 12 commission of the offense shall be raised within the
28 13 time provided for the filing of pretrial motions under
28 14 R.Cr.P. 2.11, Iowa court rules. The court may, for
28 15 good cause shown, allow late filing of the motion.
28 16 Hearing on the motion shall be held prior to trial and
28 17 the burden of proof shall be on the defendant to prove
28 18 mental retardation by a preponderance of the evidence.
28 19 However, a rebuttable presumption of mental
28 20 retardation arises if a defendant has an intelligence

28 21 quotient of seventy or below. A finding of the court
28 22 that the evidence presented by the defendant at the
28 23 hearing does not preclude the imposition of the death
28 24 penalty under this rule and Iowa Code section 902.15
28 25 shall not preclude the introduction of evidence of
28 26 mental retardation during the penalty proceeding. If
28 27 the court finds that the evidence presented by the
28 28 defendant does not preclude the imposition of the
28 29 death penalty, evidence of mental retardation may be
28 30 reviewed by the jury during the penalty proceeding and
28 31 the jury shall not be informed of the finding in the
28 32 initial proceeding at any time during the penalty
28 33 proceeding.

28 34 2.____(2) Upon a finding or plea that a defendant
28 35 is guilty of murder in the first degree, kidnapping,
28 36 and sexual abuse in an initial proceeding, if a notice
28 37 of intent to seek the death penalty has been filed and
28 38 has not been waived, the court shall conduct a
28 39 separate penalty proceeding to determine whether the
28 40 defendant shall be sentenced to death or to life
28 41 imprisonment. The penalty proceeding shall be
28 42 conducted in the trial court before the trial jury, or
28 43 the court, if there is no jury, no sooner than twenty=
28 44 four hours after the return of the verdict or plea in
28 45 the initial proceeding. In the penalty proceeding,
28 46 additional evidence may be presented as to the
28 47 conviction for murder in the first degree, kidnapping,
28 48 and sexual abuse or any aggravating or mitigating
28 49 circumstance which may exist. Presentation of
28 50 evidence which is relevant to the existence of an
29 1 aggravating or mitigating circumstance shall not be
29 2 bound by the rules of evidence. This subsection does
29 3 not authorize the introduction of any evidence secured
29 4 in violation of the Constitution of the United States
29 5 or of the Constitution of the State of Iowa. The
29 6 state and the defendant or the defendant's counsel
29 7 shall be permitted to cross-examine witnesses and to
29 8 present arguments for or against a sentence of death.

29 9 2.____(3) On conclusion of the presentation of the
29 10 evidence in the penalty proceeding, the state and the
29 11 defendant or the defendant's counsel shall be
29 12 permitted to make closing arguments, including any
29 13 rebuttal arguments, in the same manner as in the
29 14 initial proceeding and the court shall submit each of
29 15 the following issues to the jury:

29 16 a. Whether one or more of those circumstances
29 17 outweigh any one or more mitigating circumstances.
29 18 b. Whether the defendant shall be sentenced to
29 19 death.

29 20 If the case is not tried to a jury, the court shall
29 21 determine the issues.

29 22 2.____(4) The state must prove the issue in rule 2.
29 23 ____ (3)(a) beyond a reasonable doubt, and the jury, or
29 24 the court if there is no jury, shall return a special
29 25 verdict of "yes" or "no" on each issue.

29 26 2.____(5) If the case is tried to a jury, the court
29 27 shall charge the jury that:

29 28 a. It shall answer any issue "yes" if it agrees
29 29 unanimously.

29 30 b. It shall answer any issue "no" if the jurors
29 31 unanimously agree that the answer is "no" or if the
29 32 jurors do not unanimously agree that the answer is
29 33 "yes".

29 34 2.____(6) Concurrently with the return of the
29 35 special verdicts under rule 2.____(4), the jury, or the
29 36 court if there is no jury, shall also return special
29 37 verdicts as follows:

29 38 a. Which aggravating circumstances were
29 39 established and were considered in reaching the
29 40 verdict returned on the issue specified in rule
29 41 2.____(3)(a).

29 42 b. Which mitigating circumstances were established
29 43 and were considered in reaching the verdict returned
29 44 on the issue specified in rule 2.____(3)(a).

29 45 2.____(7) If the jury, or the court, if there is no
29 46 jury, returns an affirmative finding on all applicable
29 47 issues, the court shall sentence the defendant to
29 48 death. If the jury or the court returns a negative
29 49 finding on any applicable issue, the court shall
29 50 sentence the defendant to the custody of the director
30 1 of the department of corrections for confinement for

30 2 the rest of the defendant's life.

30 3 2.____(8) After a verdict has been rendered it
30 4 shall be recorded on the jury verdict form and shall
30 5 be read and recorded in open court. The jurors shall
30 6 be collectively asked by the court whether the verdict
30 7 returned is their true and correct verdict. Even
30 8 though no juror makes any declaration to the contrary,
30 9 the jury shall, if either party so requests, be polled
30 10 and each juror shall be separately asked whether the
30 11 verdict rendered by the jury foreperson is the juror's
30 12 true and correct verdict. If, upon either the
30 13 collective or the separate inquiry, any juror denies
30 14 that the verdict is the juror's verdict, the court
30 15 shall refuse to accept the verdict. The court may
30 16 direct inquiry or permit inquiry by counsel to
30 17 ascertain whether any juror has been subjected to
30 18 coercion or has become confused during the jury
30 19 deliberation process. The court may, as appropriate,
30 20 direct the jury to resume deliberation in the case.
30 21 If no disagreement on the verdict is expressed by any
30 22 of the jurors, the court shall discharge the jury.

30 23 2.____(9) Provisions relating to deferred judgment,
30 24 deferred sentence, suspended sentence, reconsideration
30 25 of sentence, probation, parole, or work release
30 26 contained in Iowa Code chapters 901 through 909 do not
30 27 apply to a conviction of murder in the first degree,
30 28 kidnapping, and sexual abuse under Iowa Code section
30 29 902.15 if the defendant is sentenced to death.

30 30 Sec. 53. NEW RULE. 2.____ AUTOMATIC REVIEW ==
30 31 STAY OF EXECUTION OF JUDGMENT.

30 32 2.____(1) A judgment of conviction and sentence of
30 33 death shall be reviewed automatically in the manner
30 34 provided in Iowa Code section 814.28, and the Iowa
30 35 supreme court has exclusive jurisdiction of the
30 36 review.

30 37 2.____(2) Upon entry of judgment and sentence of
30 38 death, the trial court shall prepare a complete record
30 39 and transcript of the action in the manner provided in
30 40 the rules of criminal procedure and shall docket the
30 41 record and transcript with the clerk of the supreme
30 42 court.

30 43 2.____(3) The execution of judgment of the trial
30 44 court is stayed as a matter of law from the time of
30 45 its entry until the judgment of the supreme court is
30 46 certified to and entered by the trial court. Upon
30 47 entry of a judgment of the supreme court which affirms
30 48 the conviction and sentence, the stay of execution of
30 49 judgment terminates as a matter of law.

30 50 2.____(4) All court costs required due to the
31 1 automatic preparation of the record and transcript,
31 2 docketing with the supreme court, and stay of
31 3 execution of judgment shall be assessed to the state.

31 4 Sec. 54. NEW RULE. 2.____ ISSUANCE OF WARRANT.

31 5 2.____(1) Upon entry by the trial court of the
31 6 judgment of the supreme court affirming a judgment and
31 7 sentence of death, a district judge shall within five
31 8 days of the entry issue a warrant under the seal of
31 9 the court for the execution of the sentence of death.
31 10 The warrant shall specifically set forth the offense
31 11 and the fact of conviction, shall state the judgment
31 12 and sentence of the court, shall state that the
31 13 judgment and sentence were affirmed by the supreme
31 14 court and the date of entry of judgment of the supreme
31 15 court in the trial court, and shall, subject to the
31 16 requirements of Iowa Code section 902.1, subsection 2,
31 17 specify a range of five days for execution of the
31 18 defendant which shall be not less than fifty nor more
31 19 than sixty days after the date of entry in the trial
31 20 court of the judgment of the supreme court affirming
31 21 the judgment and sentence of death. The warrant shall
31 22 be directed to the director of the department of
31 23 corrections commanding the director to cause the
31 24 warrant to be executed within the dates specified.
31 25 The trial court shall deliver the warrant to the
31 26 sheriff of the county in which judgment of conviction
31 27 was entered and the sheriff shall deliver the warrant
31 28 to the director of the department of corrections. The
31 29 director of the department of corrections shall
31 30 acknowledge receipt of the warrant and the defendant,
31 31 and the sheriff shall return the acknowledgment to the
31 32 office of the clerk of the trial court from which the

31 33 warrant was issued.
31 34 2.____(2) Immediately after issuance of a warrant
31 35 ordering a sentence of death, the clerk of the trial
31 36 court issuing the warrant shall transmit by certified
31 37 mail to the governor a copy of the indictment, the
31 38 plea, the verdict and special findings, the
31 39 affirmation of judgment and sentence by the supreme
31 40 court, and the complete transcript of the trial court.
31 41 2.____(3) Notwithstanding rule 2.____(1), if a
31 42 defendant, for whom a warrant of execution is issued,
31 43 is pregnant, the execution shall not take place until
31 44 after the defendant is no longer pregnant.
31 45 Notwithstanding rule 2.____(1), if a defendant, for
31 46 whom a warrant of execution is issued, is suffering
31 47 from such a diseased or deranged condition of the mind
31 48 as to prevent the defendant from knowing the nature
31 49 and quality of the act the defendant has been
31 50 convicted of, or from understanding that trial on the
32 1 offense has taken place and that execution proceedings
32 2 are about to take place, or to otherwise cause the
32 3 defendant to lack the capacity to understand the
32 4 sentence which has been imposed and to participate in
32 5 any legal proceedings relating to the sentence, the
32 6 execution shall not take place until after the
32 7 defendant is no longer suffering from the condition.
32 8 Sec. 55. NEW RULE. 2.____ EVIDENCE AT PENALTY
32 9 PROCEEDING WHERE DEATH SENTENCE REQUESTED.
32 10 2.____(1) At a reasonable time before the
32 11 commencement of initial proceedings in a first degree
32 12 murder trial in which a sentence of death has been
32 13 requested, each party shall file and serve upon the
32 14 other party the following:
32 15 a. A list of all aggravating or mitigating
32 16 circumstances which the party intends to prove during
32 17 the sentencing proceedings.
32 18 b. The names of all persons whom the party intends
32 19 to call as witnesses during the sentencing
32 20 proceedings.
32 21 c. Notwithstanding rule 2.14, copies, or for
32 22 inspection purposes, the location, of all documents,
32 23 including books, papers, writings, drawings, graphs,
32 24 charts, photographs, telephone records, and other data
32 25 compilations from which information can be obtained,
32 26 or other objects which the party intends to offer into
32 27 evidence during the sentencing proceedings. If copies
32 28 are not supplied to opposing counsel, the party shall
32 29 make the items available for inspection and copying
32 30 without order of the court.
32 31 2.____(2) In proceedings to determine whether the
32 32 sentence shall be death or life imprisonment, evidence
32 33 may be presented as to any matter which the trial
32 34 court deems relevant to the sentence, including but
32 35 not limited to the nature, circumstances, and manner
32 36 of completion of the murder, and the defendant's
32 37 character, background, history, and mental and
32 38 physical condition. The trial court shall admit any
32 39 relevant admissible evidence respecting any
32 40 aggravating or mitigating circumstances, if the party
32 41 has included the circumstance on a list provided
32 42 pursuant to this rule, or good cause is shown for the
32 43 failure to do so.
32 44 Sec. 56. EFFECTIVE DATE == SEVERABILITY.
32 45 1. This division of this Act takes effect January
32 46 1, 2006, and applies to offenses committed on or after
32 47 that date.
32 48 2. If any provision of this division of this Act
32 49 or the application thereof to any person is invalid,
32 50 the invalidity shall not affect the provisions or
33 1 application of this division of this Act which can be
33 2 given effect without the invalid provisions or
33 3 application and to this end, the provisions of this
33 4 division of this Act are severable.
33 5 DIVISION V
33 6 VICTIM RIGHTS
33 7 Sec. 57. NEW SECTION. 235D.1 CRIMINAL HISTORY
33 8 CHECK == APPLICANTS AT DOMESTIC ABUSE OR SEXUAL
33 9 ASSAULT CENTERS.
33 10 An applicant for employment at a domestic abuse or
33 11 sexual assault center shall be subject to a national
33 12 criminal history check through the federal bureau of
33 13 investigation. The domestic abuse or sexual assault

33 14 center shall request the criminal history check and
33 15 shall provide the applicant's fingerprints to the
33 16 department of public safety for submission through the
33 17 state criminal history repository to the federal
33 18 bureau of investigation. The applicant shall
33 19 authorize release of the results of the criminal
33 20 history check to the domestic abuse or sexual assault
33 21 center. The applicant shall pay the actual cost of
33 22 the fingerprinting and criminal history check, if any.
33 23 Unless the criminal history check was completed within
33 24 the ninety calendar days prior to the date the
33 25 application is received by the domestic abuse or
33 26 sexual assault center, the center shall reject and
33 27 return the application to the applicant. The results
33 28 of a criminal history check conducted pursuant to this
33 29 subsection shall not be considered a public record
33 30 under chapter 22. For purposes of this section,
33 31 "domestic abuse or sexual assault center" means a
33 32 facility which is used to house victims of domestic
33 33 abuse or sexual assault, and is owned, operated, or
33 34 maintained by a nonprofit organization.

33 35 Sec. 58. NEW SECTION. 709.22 PREVENTION OF
33 36 FURTHER SEXUAL ASSAULT == NOTIFICATION OF RIGHTS.

33 37 If a peace officer has reason to believe that a
33 38 sexual assault as defined in section 915.40 has
33 39 occurred, the officer shall use all reasonable means
33 40 to prevent further violence including but not limited
33 41 to the following:

33 42 1. If requested, remaining on the scene of the
33 43 alleged sexual assault as long as there is a danger to
33 44 the victim's physical safety without the presence of a
33 45 peace officer, including but not limited to staying in
33 46 the dwelling unit, or if unable to remain on the
33 47 scene, assisting the victim in leaving the residence.

33 48 2. Assisting a victim in obtaining medical
33 49 treatment necessitated by the sexual assault,
33 50 including providing assistance to the victim in
34 1 obtaining transportation to the emergency room of the
34 2 nearest hospital.

34 3 3. Providing a victim with immediate and adequate
34 4 notice of the victim's rights. The notice shall
34 5 consist of handing the victim a copy of the following
34 6 statement written in English and Spanish, asking the
34 7 victim to read the statement, and asking whether the
34 8 victim understands the rights:

34 9 "You have the right to ask the court for help with
34 10 any of the following on a temporary basis:

34 11 a. Keeping your attacker away from you, your home,
34 12 and your place of work.

34 13 b. The right to stay at your home without
34 14 interference from your attacker.

34 15 c. The right to seek a no-contact order under
34 16 section 709.20 or 915.22, if your attacker is arrested
34 17 for sexual assault.

34 18 You have the right to register as a victim with the
34 19 county attorney under section 915.12.

34 20 You have the right to file a complaint for threats,
34 21 assaults, or other related crimes.

34 22 You have the right to seek restitution against your
34 23 attacker for harm to you or your property.

34 24 You have the right to apply for victim
34 25 compensation.

34 26 You have the right to contact the county attorney
34 27 or local law enforcement to determine the status of
34 28 your case.

34 29 If you are in need of medical treatment, you have
34 30 the right to request that the officer present assist
34 31 you in obtaining transportation to the nearest
34 32 hospital or otherwise assist you.

34 33 You have the right to a sexual assault examination
34 34 performed at state expense.

34 35 If you believe that police protection is needed for
34 36 your physical safety, you have the right to request
34 37 that the officer present remain at the scene until you
34 38 and other affected parties can leave or until safety
34 39 is otherwise ensured."

34 40 The notice shall also contain the telephone numbers
34 41 of shelters, support groups, and crisis lines
34 42 operating in the area.

34 43 Sec. 59. Section 915.10, subsections 1 and 2, Code
34 44 2005, are amended to read as follows:

34 45 1. "Notification" means mailing by regular mail or
34 46 providing for hand delivery of appropriate information
34 47 or papers. However, this notification procedure does
34 48 not prohibit an office, agency, or department from
34 49 also providing appropriate information to a registered
34 50 victim by telephone, electronic mail, or other means.

35 1 2. "Registered" means having provided the county
35 2 attorney with the victim's written request for
35 3 registration and current mailing address and telephone
35 4 number. If an automated victim notification system is
35 5 implemented pursuant to section 915.10A, "registered"
35 6 also means having filed a request for registration
35 7 with the system.

35 8 Sec. 60. NEW SECTION. 915.10A AUTOMATED VICTIM
35 9 NOTIFICATION SYSTEM.

35 10 1. An automated victim notification system may be
35 11 utilized to assist public officials in informing crime
35 12 victims, the victim's family, or other interested
35 13 persons as provided in this subchapter and where
35 14 otherwise specifically provided. The system shall
35 15 disseminate the information to registered users
35 16 through telephonic, electronic, or other means of
35 17 access.

35 18 2. An office, agency, or department may satisfy a
35 19 notification obligation to registered victims required
35 20 by this subchapter through participation in the system
35 21 to the extent information is available for
35 22 dissemination through the system. Nothing in this
35 23 section shall relieve a notification obligation under
35 24 this subchapter due to the unavailability of
35 25 information for dissemination through the system.

35 26 3. Notwithstanding section 232.147, information
35 27 concerning juveniles charged with a felony offense
35 28 shall be released to the extent necessary to comply
35 29 with this section.

35 30 Sec. 61. Section 915.11, Code 2005, is amended to
35 31 read as follows:

35 32 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

35 33 A local police department or county sheriff's
35 34 department shall advise a victim of the right to
35 35 register with the county attorney, and shall provide a
35 36 request-for-registration form to each victim. If an
35 37 automated victim notification system is available
35 38 pursuant to section 915.10A, a local police department
35 39 or county sheriff's department shall provide a
35 40 telephone number and website to each victim to
35 41 register with the system.

35 42 Sec. 62. Section 915.12, Code 2005, is amended to
35 43 read as follows:

35 44 915.12 REGISTRATION.

~~35 45 1. The county attorney shall be the sole registrar~~
~~35 46 of victims under this subchapter.~~

35 47 2. 1. A victim may register by filing a written
35 48 request-for-registration form with the county
35 49 attorney. The county attorney shall notify the
35 50 victims in writing and advise them of their
36 1 registration and rights under this subchapter.

36 2 3. The county attorney shall provide a registered
36 3 victim list to the offices, agencies, and departments
36 4 required to provide information under this subchapter
36 5 for notification purposes.

36 6 2. If an automated victim notification system, the
36 7 victim's family, is available pursuant to section
36 8 915.10A, a victim, the victim's family, or other
36 9 interested person may register with the system by
36 10 filing a request for registration through written,
36 11 telephonic, or electronic means.

36 12 4. 3. Notwithstanding chapter 22 or any other
36 13 contrary provision of law, a victim's the registration
36 14 of a victim, victim's family, or other interested
36 15 person shall be strictly maintained in a separate
36 16 confidential file or other confidential medium, and
36 17 shall be available only to the offices, agencies, and
36 18 departments required to provide information under this
36 19 subchapter.

36 20 Sec. 63. Section 915.29, Code 2005, is amended by
36 21 adding the following new unnumbered paragraph:

36 22 NEW UNNUMBERED PARAGRAPH. The notification
36 23 required pursuant to this section may occur through
36 24 the automated victim notification system referred to
36 25 in section 915.10A to the extent such information is

36 26 available for dissemination through the system.
36 27 Sec. 64. Section 915.45, Code 2005, is amended by
36 28 adding the following new unnumbered paragraph:
36 29 NEW UNNUMBERED PARAGRAPH. The notification
36 30 required pursuant to this section may occur through
36 31 the automated victim notification system referred to
36 32 in section 915.10A to the extent such information is
36 33 available for dissemination through the system.

36 34 DIVISION VI
36 35 TASK FORCE

36 36 Sec. 65. SEX OFFENDER TREATMENT AND SUPERVISION
36 37 TASK FORCE.

36 38 1. The division of criminal and juvenile justice
36 39 planning shall establish a task force to study and
36 40 make periodic recommendations for treating and
36 41 supervising sex offenders in correctional institutions
36 42 and in the community. The task force shall file a
36 43 report with recommendations with the general assembly
36 44 by January 15, 2006. The task force shall study the
36 45 effectiveness of electronic monitoring and the
36 46 potential effects and costs associated with the
36 47 special sentence created in this Act. The task force
36 48 shall study risk assessment models created for sex
36 49 offenders. The task force shall also review this
36 50 state's efforts and the efforts of other states to
37 1 implement treatment programs and make recommendations
37 2 as to the best treatment options available for sex
37 3 offenders. The task force shall also develop a plan
37 4 to integrate state government databases for the
37 5 purpose of updating addresses of persons on the sex
37 6 offender registry.

37 7 2. Members of the task force shall include
37 8 representatives of the following state agencies and
37 9 organizations:

- 37 10 a. One representative of the department of human
37 11 services.
- 37 12 b. One representative of the department of public
37 13 safety.
- 37 14 c. One representative of the Iowa state sheriffs
37 15 and deputies association.
- 37 16 d. One representative of the Iowa county attorneys
37 17 association.
- 37 18 e. One representative of the department of
37 19 corrections.
- 37 20 f. One representative of the board of parole.
- 37 21 g. One representative of a judicial district
37 22 department of correctional services.
- 37 23 h. One representative of the department of
37 24 justice.
- 37 25 i. One representative of the state public
37 26 defender.
- 37 27 j. One representative of the Iowa coalition
37 28 against sexual assault.

37 29 DIVISION VII
37 30 STATE MANDATE

37 31 Sec. 66. IMPLEMENTATION OF ACT. Section 25B.2,
37 32 subsection 3, shall not apply to this Act.>
37 33 #2. Title page, by striking lines 1 through 5 and
37 34 inserting the following: <An Act relating to criminal
37 35 sentencing, victim notification, and the sex offender
37 36 registry, including making the death penalty
37 37 applicable to certain class "A" felons, establishing a
37 38 special sentence for certain offenders, requiring DNA
37 39 testing of certain offenders, requiring sex offender
37 40 treatment in order to accumulate earned time,
37 41 establishing a sex offender treatment and supervision
37 42 task force, providing penalties, and providing
37 43 effective dates.>>

37 44
37 45
37 46
37 47 LARRY McKIBBEN
37 48 HF 619.315 81
37 49 jm/cf/2958